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Department of Water Resources

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

) 91-00005, 91-00005A and 91-00005B
) (In the future: 91-00005, 91-00005-34, 91-00005-36
) and 91-00005-57
)
) SECOND AMENDED ORDER OF
) CONSOLIDATION/SEPARATION OF ISSUES
) (REALIGNMENT AND REDESIGNATION OF
) ISSUES) OF BASIN-WIDE ISSUES 5, 5A and 5B;
) AO1 § 11

I.

AUGUST 31, 1999

**ORDER OF CONSOLIDATION/SEPARATION OF ISSUES
(REALIGNMENT AND REDESIGNATION OF ISSUES)
OF BASIN-WIDE ISSUES 5, 5A AND 5B; AO1 § 11**

On August 31, 1999, this Court entered the above-referenced Order Of Consolidation/Separation of Issues following remand from the Idaho Supreme Court.

Among other things in the Order of August 31, 1999, this Court separated into the three respective sub-basins (34, 36 and 57) IDWR's proposed general provision regarding conjunctive management.

The basis of this Court's separation on remand was the following language from the Supreme Court:

Here of course, the Director's proposed conjunctive management provisions were designed to address within the SRBA the ground water and surface water interconnections and impacts relating to three specific Basins. **The general provisions proposed for each of the Basins were not identical, but were distinctively crafted evidently due to the unique characteristics of each of the individual reporting areas.**

We conclude that the order of the district court denying the inclusion of general provisions dealing with interconnection and conjunctive management of

surface and ground water rights in Basins 34, 36 and 57 must be vacated and the matter remanded to the district court for the purpose of holding an evidentiary hearing to determine factually whether the proposed general provisions for each of those areas is necessary either to define or to efficiently administer the water rights decreed by the court in the adjudication process. **Because each of the proposed general provisions regarding interconnection and conjunctive management in Basins 34, 36 and 57 is separate and distinct, each Basin's conjunctive management provision must be discretely considered in reaching the factual determination whether the respective general provision is necessary either to define or to more efficiently administer water rights in that particular Basin.**

A&B Irrigation v. Idaho Conservation, 131 Idaho 411, 422, 423 (emphasis added).

We remand this proceeding to the SRBA district court for the purpose of holding an evidentiary hearing to determine whether the conjunctive management general provisions proposed for Basins 34, 36 and 57 are necessary to define or to administer water rights efficiently in any of those particular Basins.

Id. at 425 (emphasis added).

The respective conjunctive management provisions at issue in *A&B* are set forth in Appendix C and D to that decision and were as follows:

APPENDIX C

AMENDED GENERAL PROVISIONS ON CONJUNCTIVE MANAGEMENT FOR BASINS 34 AND 36

BASIN 34

3. CONJUNCTIVE MANAGEMENT OF GROUND AND SURFACE WATER RIGHTS WITHIN BASIN 34.

a. Some ground water rights in the list of water rights are described as being administered separate from the Big Lost River and its tributaries. All other ground water rights not so described will be administered as part of the Big Lost River and tributaries.

BASIN 36

1. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER.
The Eastern Snake River Plain Aquifer, the springs tributary to the Snake River or other surface tributaries, and surface tributaries to the Snake River in Basin 36 downstream from the Milner Dam are hydrologically connected to varying degrees.

The perched aquifer in the Rupert area is tributary both to the Snake River upstream from the Milner Dam and to the Easter Snake River Plain Aquifer. Basin 36 water rights for surface and ground water, and Snake River water rights will be administered conjunctively, pursuant to law,

APPENDIX D

ORIGINAL GENERAL PROVISION ON CONJUNCTIVE MANAGEMENT FOR BASIN 57

4. GENERAL PROVISION 4: ADMINISTRATION OF BASIN 57 AND SNAKE RIVER BASIN. Information currently available to IDWR does not provide a complete understanding of the interrelationship between water sources in Basin 57 and the Snake River; however, it does indicate that water source in Basin 57 do not provide a significant amount of water of the Snake River. Therefore, the water sources in Basin 57 are not subject to administration as part of the Snake River at this time, but may become subject to such administration if the Director determines that such administration is necessary to protect senior rights from the Snake River.

Id. at 420.

II. SUPPLEMENTAL DIRECTOR'S REPORTS ON REMAND

On remand from the Supreme Court, Judge Hurlbutt ordered IDWR to file Supplemental Director's Reports with recommendations as to specific dates for the beginning and ending of the irrigation season and as to conjunctive management. *Order Requesting Supplemental Director's Reports from Idaho Department of Water Resources for Irrigation Season and Conjunctive Management General Provisions in Reporting Areas 1, 2 and 3* (Dec. 9, 1998). The SRBA Court set the due date for the Supplemental Director's Reports as previously ordered by Judge Hurlbutt. *Amended Order Requesting Supplemental Director's Reports from Idaho Department of Water Resources for Irrigation Season and Conjunctive Management General Provisions in Reporting Areas 1, 2 and 3* (May 5, 1999). On June 24, 1999, IDWR filed its *Supplemental Director's Report, Reporting Area 1, IDWR Basin 34, Regarding Revision of the Following: Period of Use (for Irrigation Water Uses), Conjunctive Management General Provisions (Supplemental Director's Report)* which set forth specific dates for the irrigation

season, included a recommendation on conjunctive management, and established the deadline for Objections as July 30, 1999.

On July 26, 1999, IDWR filed its *Supplemental Director's Report, Reporting Area 2, IDWR Basin 57, Regarding Revision of the Following: Period of Use (for Irrigation Water Uses), Conjunctive Management General Provisions (Supplemental Director's Report)* which set forth specific dates for the irrigation season, included a recommendation on conjunctive management, and established the deadline for Objections as September 3, 1999.

On August 2, 1999, IDWR filed its *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of the Following: Period of Use (for Irrigation Water Uses), Conjunctive Management General Provisions (Supplemental Director's Report)* which set forth specific dates for the irrigation season, included a recommendation on conjunctive management, and established the deadline for Objections as September 10, 1999.

III. IDWR'S NOW PROPOSED GENERAL PROVISIONS ON CONJUNCTIVE MANAGEMENT

The now proposed general provisions on conjunctive management recommended by IDWR on remand from the Supreme Court have changed (from the respective Supplemental Director's Reports referred to in Paragraph II above) and now read:

BASIN 34

7. All water rights within Basin 34 are from connected sources of water in the Snake River Basin and shall be administered conjunctively.¹

¹ Two exceptions with interconnection of water sources to conjunctive management within Basin 34 proper (i.e., intra-basin) are listed in the Supplemental Director's Report in Basin-Wide 34. Those are proposed general provisions 5 and 6. These two proposed general provisions will remain in the designated Basin 5-34 because they are unique to Basin 34 and they should have little bearing on the overall general issue of conjunctive management state-wide. Additionally, according to the proposed Basin 34 general provisions quoted above, the Director states that all water in Basin 34 is interconnected with sources of water in the Snake River Basin (i.e., inter-basin or state-wide).

BASIN 36

All water rights with Basin 36 are from connected sources of water in the snake River Basin and shall be administered conjunctively.²

BASIN 57

All water rights with Basin 57 are from connected sources of water in the snake River Basin and shall be administered conjunctively.³

In other words, except for the intra-basin uniqueness in Basin 34 as to interconnection of water sources, as stated in paragraph 5 and 6 of the proposed general provisions in that sub-basin, all three of the proposed general provisions on conjunctive management now read identically:

All water rights within Basin _____ are from connected sources of water in the Snake River Basin and shall be administered conjunctively.

IV.

AUGUST 31, 1999

**ORDER SETTING SCHEDULING CONFERENCE FOR
REMANDED BASIN-WIDE ISSUE 5-34 AS REDESIGNATED
(GENERAL PROVISIONS IN BASIN 34)AND
HEARING IN ARCO, IDAHO, ON OCTOBER 20, 1999 AND
REALIGNMENT OF ISSUES IN 5-34, 5-36 AND 5-57**

On August 31, 1999, this Court entered the above-referenced order setting a scheduling conference in Arco, Idaho, on October 20, 1999, regarding the four general provisions issues under the then newly designated Basin-Wide Issue 5-34.

² IDWR now lists no exceptions with interconnection of water sources to conjunctive management in Basin 36, i.e., no sources of water are listed as being administered separately in Basin 36 (intra-basin) or from all other waters in the Snake River Basin (inter-basin or state-wide).

³ IDWR now lists no exceptions with interconnection of water sources to conjunctive management in Basin 57, i.e., no sources of water are listed as being administered separately in Basin 57 (intra-basin) or from all other waters in the Snake River Basin (inter-basin or state-wide).

Those four issues were:

- Conjunctive management within Basin 34
- Beginning and ending dates of the irrigation period of use
- Administration of surface sources
- Storage

At the hearing on October 20, 1999, numerous counsel and several pro se litigants participated. It was the near unanimous consensus of all that it was appropriate for the Court to redesignate and combine proposed general provisions to a particular sub-basin, with the exception of the proposed general provisions regarding conjunctive management which was felt would be better decided on a state-wide basis rather than within each basin. After hearing all interested parties and counsel, this Court orally ordered that remanded Basin-Wide Issue 5-34 would exclude conjunctive management and would cover only:

- Beginning and ending dates of the irrigation period of use
- Administration of surface sources
- Storage

With the exception of removing conjunctive management and redesignating it, the August 31, 1999, Order on Basin-Wide Issue 5-34 remains in all other respects as written.

Likewise, conjunctive management is removed from the Basin-Wide Issues 5-36 and 5-57 and is again placed in Snake River Basin-Wide (i.e., all of the state involved in the adjudication) Issue 5. In other words, "Basin-Wide Issue 5 On Remand - Conjunctive Management", as now designated, deals only with conjunctive management (interconnection of sources of water generally) and is to be a "Snake-River-Basin-wide determination." However, if there are unique questions on conjunctive management or interconnection of sources of water presented for any particular sub-basin, such as in Basin 34, they will be dealt with on a sub-basin basis.

Basin-Wide Issue 5-36 will deal only with beginning and ending dates of the irrigation period of use. Basin-Wide Issue 5-57 will deal only with beginning and ending dates of the irrigation period of use and to which specific decrees should contain "excess" water provisions. See Order of Consolidation/Separation of Issues, August 31, 1999.

It was further ordered that a new order would be prepared redesignating the proposed general provisions regarding conjunctive management as simply Basin-Wide Issue 5 On Remand - Conjunctive Management, with new notice being given. That ruling is now memorialized in this order.

V.

**BASIN-WIDE (STATE-WIDE) ISSUE 5 ON
REMAND - CONJUNCTIVE MANAGEMENT
IDWR PROPOSED GENERAL PROVISIONS
ON CONJUNCTIVE MANAGEMENT**

IDWR'S proposed general provisions on conjunctive management in all sub-basins of the Snake River Basin, including sub-basins 34, 36 and 57 (the "test basins"), are now designated as "Basin-Wide Issue 5 On Remand - Conjunctive Management," again, subject to any sub-basin uniqueness as previously discussed.

VI.

**OBJECTIONS TO THE SUPPLEMENTAL DIRECTOR'S REPORTS
AND NOTICE OF INTENT TO PARTICIPATE**

Following remand, the Director filed Supplemental Director's Reports for each of the three Test Basins (34, 36 and 57). The objection period in Basin 34 (now designated Basin-Wide Issue 5-34) expired July 30, 1999. A separate scheduling order was set for all of those objections. The objection period for Basin 57 (now designated Basin-Wide Issue 5-57) expired September 3, 1999. And the objection period for Basin 36 (now designated Basin-Wide Issue 5-36) expired on September 10, 1999.

Any party who originally participated in Basin-Wide Issue 5 shall continue to be a party.

Any party to the SRBA who filed an objection to the Supplemental Director's Reports shall be a party to the redesignated Basin-Wide Issue 5 and shall be included on the certificate of mailing. Any other party to the SRBA may become a party to the Basin-Wide Issue in each

respective Basin by filing a Notice of Intent to Participate for the respective Basins no later than Thursday, January 27, 2000. *AOI* § 16.6

**VII.
NOTICE AND
CERTIFICATE OF MAILING**

Because it appears that the form and content of the general provisions as reported in the *Supplemental Director's Report* have changed from the original Director's Report, notice of filing this Order and this Order shall be printed in its entirety in the December 1999 Docket Sheet published January 7, 2000.

**VIII.
USE OF HISTORICAL APPELLANT RECORD
IN THE EVENT OF AN APPEAL**

Because this Court has "realigned" the issues and designated those applicable to a particular basin, if on future appeal, any party wishes to utilize any portion of the record prior to realignment, the party will have to designate those portions on appeal.

**IX.
EVIDENTIARY HEARING**

IT IS ORDERED that an initial Evidentiary hearing on realigned Basin-Wide Issue 5 On Remand - Conjunctive Management will begin:

February 24, 2000 10 a.m. @ Old Federal Courthouse
304 North 8th Street
Boise, Idaho

IT IS SO ORDERED

Dated December 20, 1999.



BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

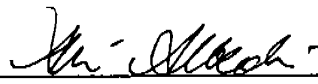
I certify that true and correct copies of the **SECOND AMENDED ORDER OF CONSOLIDATION/ SEPARATION OF ISSUES (REALIGNMENT AND REDESIGNATION OF ISSUES) OF BASIN-WIDE ISSUES 5, 5A AND 5B; A01 § 11** were mailed on December 20, 1999, with the appropriate first-class postage to the following:

IDWR Document Depository
PO Box 83720
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Chief, Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

United States Dept of Justice
Environment & Natural Resource Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Certificate of Mailing for Basin-Wide Issue 5,
Certificate of Mailing for Basin-Wide Issue 5-34
Certificate of Mailing for Basin-Wide Issue 5-36
Certificate of Mailing for Basin-Wide Issue 5-57


Deputy Clerk